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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,748	01/10/2002	Patrick Connor	PW 0276926 P12813	8404

7590 09/08/2005

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EXAMINER

PHAM, BRENDA H

ART UNIT	PAPER NUMBER
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2664

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/044,748	<b>Applicant(s)</b> CONNOR, PATRICK	
	<b>Examiner</b> Brenda Pham	<b>Art Unit</b> 2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/10/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/29/02</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-28 are pending in this application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ren et al (US 6,456,590 B1).

Claims 1-2, 4, 9-10, 12, 17-18, 20 and 25 and 28, Ren et al discloses a program code storage device, and method and a network system, comprising: a controller system to determine whether a pause has been received, to determine whether a maximum of an inter-frame spacing (IFS) has been reached if the pause has been received, and to increase the inter-frame spacing by a value if the maximum of the inter-frame spacing has not been reached to reduce a transmission rate; and a trainer system to determine whether the pause has been received, to determine whether a minimum of the inter-frame spacing has been reached if the pause has not been received, and to decrease the inter-frame spacing by a second value if the minimum of the inter-frame spacing has not been reached to train the transmission rate.

**{Ren et al teach “the MAC Flow control frames by using the MAC Control frames to turn on and off the upstream link transmitter on a port-by-port basis**

**according to the occupancy of the corresponding port's virtual input queue. More specifically, when a link needs to be turned off, we send to the upstream port a MAC Flow Control frame with the maximum Pause Time (called OFF control frame), and when a link needs to be turned on, we send a MAC Flow Control frame with zero Pause Time (called ON control frame). We could, of course, pause an upstream device for a specific time interval based on the occupancy level of its corresponding virtual input queue." (column 9, line 30-45)}**

Although Ren et al does not teach a program code storage device, comprising a machine-readable storage medium and machine-readable program code, stored on the machine-readable storage medium having instructions to perform the method as recited in claims, it is well known in the art that a machine-readable storage having stored computer program with code sections, executable by a machine for causing the machine to perform a method of controlling a transmission rate.

Therefore, it would have been obvious to those having ordinary skill in the art at the time of the invention was made to implement the method of controlling a transmission rate of Ren et al using software instructions.

Claims 3, 8, 11, 16, 19, 24 and 26-27, Ken further teach wherein the value is in byte time units. **{Ken et al teach "The pausing step may pause the upstream device for a predetermined period of time, or for a predetermined number of data transfers" (column 4, line 62-67).}**

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Claims 5-6,13-14, 21-22, Ken et al furthermore teach waiting for an event to occur prior to determining whether the pause has been received, wherein the event is a packet count (column 8, lines 9-44).

Claims 7, 15, 23, Ken et al teach wherein the event is a poll time. Ken et al teach wherein the event is a poll time (static allocation algorithm, which is not really an "event", see column 13, lines 4-24).

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (571) 272-3135. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (571) 272-3134.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

September 2, 2005

Brenda Pham

A handwritten signature in black ink that reads "Brenda A. Pham". The signature is written in a cursive style with a large, stylized initial "B" and "P".